

REMARKS/ARGUMENTS

This letter is responsive to the Office Action mailed on June 26, 2008. This Amendment is being filed simultaneously with a Request for Continued Examination. Claims 1-23 are currently pending in the application. Reconsideration of the application is requested.

Claims 1 and 13 are amended to recite certain additional features, explicit support for which can be found in paragraphs [0034] and [0075] of the specification.

Claims 1 and 13 are further amended, pursuant to Item 6 of the October 15, 2007 Office Action, to make the claimed subject matter more definite and also for consistency with previous amendments made for the same reason.

Claims 1-3, 6-10, 12-15, 18-21 and 23 rejected under 35 U.S.C. §103

The Examiner rejected claims 1-3, 6-10, 12-15, 18-21 and 23 under 35 U.S.C. §103(a) for being unpatentable over Bloom (US 6,974,928), in view of Beane (US 2003/0163388).

Claims 1 and 13

Claims 1 and 13 are amended to clarify certain differences of the two cited references, Bloom and Beane. For example, claim 1 now recites that the identical products are provided to the delivery circuit (or in the case of claim 13 that the first delivery module is adapted to receive the identical products into the delivery circuit) in advance of being ordered by one of the purchasers. Moreover, when it is determined that one of the identical products has not been ordered, then that product continues to be transported within the delivery circuit. Both these features are novel as against the specific teachings of Bloom and Beane.

As the Applicant previously noted, Bloom discloses a method and system for bulk package delivery and storage, wherein: product orders are collected, cases of products from which to fill the product orders are shipped, the cases are assembled into packages consisting of the recipient's product order, and finally the packages are delivered either directly to an address specified by the recipient or else to a centralized distribution center for pick up by the recipient. But it must again be emphasized that, according to the disclosed method and system, orders are collected before any products are shipped. See especially col. 8, lines 7-11, in which Bloom writes:

In step 1100, these orders can be captured by the retailer. Following capture of the orders, in step 1102, retailers can fill the orders by picking cases of the ordered items to meet the total ordered quantity of each item across all unfilled orders.

Expressed differently, products are not selected for shipment unless they have first been ordered and only enough products to meet the total ordered quantity of each product are selected for shipment. Bloom later elaborates how workers can fill orders by picking a combination of full and partially full cases of products equal to the total ordered quantity of each item. See the example presented at col. 15, lines 11-15 in which a total of 60 products are selected for shipment from 3 full cases of 16 products each, and 1 partial case of 12 products to make up the shortfall (i.e. $3 \times 16 + 12 = 60$). There is also the description of the Pick List Report at col. 17, line 54 to col. 18, line 38.

It clear from the above that only an exact number of products, corresponding to the total quantity of products ordered, are selected for shipment, in which case all products selected for shipment must have been ordered first. Bloom cannot therefore teach providing products to (or equivalently receiving products into) a delivery circuit in advance of the products being ordered.

But neither does Beane teach this technical feature of claims 1 and 13. Beane discloses a self-service order-processing terminal for placing food orders, but provides no indication either way of the relative sequence of placing and delivering food orders.

Accordingly, even were Beane to disclose determining whether or not one of a plurality of identical products being transported has been ordered, as was the Examiner's contention in the June 26, 2008 Office Action and again in the October 24, 2008 Advisory Action, Beane still does not explicitly disclose said product being provided to the delivery circuit in advance of being ordered.

Claims 1 and 13 were further amended to include the limitation that, when it is determined that the product has not been ordered, said product continues to be transported within the delivery circuit. It is implicit in this further limitation that products are provided to the claimed delivery circuit in advance of being ordered. As such this limitation is also novel as against, and helps to clarify certain differences in, the two cited references, Bloom and Beane.

For at the least the foregoing reasons, Applicant submits that claims 1 and 13 as pending are in condition for allowance.

Claims 12 and 23

In the Office Action, the Examiner points specifically to col. 53, lines 5-11 as disclosing the features of claims 12 and 23. This section of Bloom explains certain aspects of step 1122, in which packages are created for delivery to different recipients. According to Bloom, products can be picked from a case for inclusion in a package that is destined for delivery to a particular recipient. The number of products pick corresponds to the number of products ordered by the customer. If products remain in the case after selection for one particular package, then the case can be returned to a conveyor for re-circulation so that additional products may be selected from the case for inclusion in another package destined for delivery to another recipient. Accordingly, it is not obvious how this part of Bloom discloses the technical features recited in claims 12 and 23.

In contrast to Bloom, claims 12 and 23 recite determining whether there is a cluster of products within the delivery circuit and, when that is true, then rebalancing the flow of products within said delivery system by re-directing at least some of said products.

Claims 2-3, 6-10, 14-15 and 18-21

On account of their dependency on one of claims 1 or 13 and in view of the foregoing remarks, Applicant submits that claims 2-3, 6-10, 14-15 and 18-21 are also in condition for allowance as pending.

Claims 4, 5, 16, 17 rejected under 35 U.S.C. §103

The Examiner has rejected claims 4, 5, 16, 17 under 35 U.S.C. §103 for being unpatentable over Bloom (US 6,974,928), in further view of Official Notice. This position is respectfully traversed.

On account of their dependency on one of claims 1 or 13 and in view of the foregoing remarks, Applicant submits that claims 4, 5, 16, 16 are also in condition for allowance as pending.

Claims 11, 22 rejected under 35 U.S.C. §103

The Examiner has rejected claims 11, 22 under 35 U.S.C. §103 for being unpatentable over Bloom (US 6,974,928), in further view of Kennedy et al. (US 7,085,729). This position is respectfully traversed.

On account of their dependency on one of claims 1 or 13 and in view of the foregoing remarks, Applicant submits that claims 11, 22 are also in condition for allowance as pending.

Final Remarks

In view of the foregoing remarks, the Applicant respectfully submits that the application is now in condition for allowance, and requests issuance of a timely Notice of Allowance in this case.

If the Examiner believes that a telephone interview would expedite allowance of the application, the Examiner is invited to contact the undersigned at (416) 957-1680.

Respectfully submitted,

BRIAN ELLERILLION

A handwritten signature in black ink, appearing to read 'B. Ellerillion', is written over a horizontal line.

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